

SERVICE DATE – APRIL 10, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35808 (Sub-No. 1)

BNSF RAILWAY COMPANY
—TEMPORARY TRACKAGE RIGHTS EXEMPTION—
UNION PACIFIC RAILROAD COMPANY

Digest:¹ This decision authorizes the expiration of certain Board-approved rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely.

Decided: April 4, 2014

By petition filed on February 28, 2014, BNSF Railway Company (BNSF) requests that the Board partially revoke the class exemption to permit the trackage rights arrangement exempted in Docket No. FD 35808² to expire at midnight on October 31, 2014.

BNSF states that the purpose of this transaction is to allow BNSF to move empty and loaded ballast trains to and from the ballast pit at Elsey, Cal., which is adjacent to the UP rail line.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² In that docket, on February 28, 2014, BNSF filed a verified notice of exemption under the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(7). The notice addressed an agreement in which Union Pacific Railroad Company (UP) granted local trackage rights to BNSF over UP's lines extending between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of approximately 126.2 miles; and (2) UP milepost 219.4 at Elsey, Cal., and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles. BNSF states that the trackage rights that were granted there are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 C.F.R. § 1180.2(d)(8). See BNSF Ry.—Temporary Trackage Rights Exemption—Union Pac. R.R., FD 35808 (STB served Mar. 24, 2014).

DISCUSSION AND CONCLUSION

Although BNSF and UP have expressly agreed on the duration of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption at 49 C.F.R. § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, trackage rights exemptions have been granted for a limited time period rather than in perpetuity. See Union Pac. R.R.—Temporary Trackage Rights Exemption—BNSF Ry., FD 34554 (Sub-No. 17) (STB served Nov. 14, 2012).

Under 49 U.S.C. § 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

BNSF's temporary trackage rights already have been authorized under the class exemption at 49 C.F.R. § 1180.2(d)(7). See R.R. Consolidation Procedures—Trackage Rights Exemption, 1 I.C.C.2d 270 (1985). Granting partial revocation here would promote the rail transportation policy by eliminating the need to file a second pleading seeking discontinuance when the arrangement expires, thereby promoting the following rail transportation policy goals: minimizing the need for Federal regulatory control (49 U.S.C. § 10101(2)); ensuring the continuation of a sound rail transportation system to meet the public need (§ 10101(4)); ensuring coordination between rail carriers (§ 10101(5)); reducing regulatory barriers to entry into and exit from the industry (§ 10101(7)); and providing for the expeditious handling and resolution of this proceeding (§ 10101(15)). Moreover, limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted, and would have no adverse impact on shippers on the line because the trackage rights that are the subject of the exemption are solely to allow BNSF to move empty and loaded ballast trains to and from the ballast pit at Elsey, Cal. Therefore, we will grant the petition and permit the trackage rights exempted in Docket No. FD 35808 to expire at midnight on October 31, 2014.

In order to provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. § 10502, the trackage rights described in Docket No. FD 35808 are exempted, as discussed above, to permit the trackage rights to expire at midnight on October 31, 2014, subject to the employee protective conditions set forth in Oregon Short Line, 360 I.C.C. 91 (1979).
3. Notice will be published in the Federal Register on April 10, 2014.
4. This decision is effective on May 10, 2014. Petitions to stay must be filed by April 21, 2014. Petitions for reconsideration must be filed by April 30, 2014.

By the Board, Chairman Elliott and Vice Chairman Begeman.